QUESTIONS PRESENTED

1. Whether the Federal Communications Commission has abused its discretion in refusing to consider any circumstance of market failure in the provision of radio entertainment formats to a local community?

2. Whether an administrative agency must provide a safety valve for consideration of particularized circumstances which might negate the purposes of a rule or policy if the rule or policy were applied?

3. Whether the First Amendment or the Communications Act prohibit consideration of entertainment formats at the time of sale or renewal of license?

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Nos. 79-824, 79-825, 79-826, 79-827

In The

Supreme Court of the United States

October Term, 1979

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,

Petitioners

v.

WNCN LISTENERS GUILD et al.

Respondents

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF OF AMICI CURIAE CONSUMER FEDERATION OF AMERICA et al.

OPINIONS BELOW

JURISDICTION

STATUTES INVOLVED

Amici Adopt the Petitioners' statements under these headings.

INTEREST OF THE PARTIES

AMICI CURIAE

Each of the amici curiae listed and described below is a citizen organization interested in seeing the largest and most effective use of the broadcast medium in the public's interest.

consistent with the First Amendment and the Communications Act. Specifically, each of these groups believes that the Federal Communications Commission has the responsibility to consider specific circumstances in the loss of unique entertainment formats, consistent with the Court of Appeals' en banc holding below. The amici also urge the Court not to allow the imposition of marketplace theory on circumstances where agency preconceptions run contrary to the facts.

Basically, the amici urge the Court to affirm the Court of Appeals' decision in full. We also urge both a narrow reading of the case below and a narrow decision on review, in view of the pendency of other actions at the FCC which might be affected by this case.

The amici are as follows:

CONSUMER FEDERATION OF AMERICA, headquartered in Washington, D.C., is a national coalition of over 240 nonprofit organizations, representative of over 30 million citizens, seeking here to represent the interests of consumers, viz., broadcast audiences around the country.

BOSTON COMMUNITY MEDIA COMMITTEE, COMMUNITY CAUCUS is the community arm of an organization, established in 1966, to combine broadcast industry and local community resources to encourage effective participation of minority audiences in Boston's mass media.

CLASSICAL MUSIC SUPPORTERS, headquartered in the Seattle, Washington market, includes 14,000 households in western Washington State, with approximately 2,500 households being regular dues-paying members. It seeks to further the interests of the listening audience with classical music as their first preference.

COMMITTEE FOR OPEN MEDIA is a citizens group headquartered in San Jose, California. It is a standing committee of the Santa Clara Valley Chapter of the ACLU and has as its objective the fullest and most democratic use of the broadcast media consistent with the First Amendment.

COMMUNICATIONS COMMISSION of the NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE U.S.A. is an agency of 32 Protestant and Orthodox Communions in the United States, which together have a total membership of about 42 million persons. Its member communions have charged the NCCC "to study and to speak and act on conditions and issues in the Nation and in the world which involve moral, ethical, and spiritual principles inherent in the Christian gospel." The Governing Board of the NCCC does not claim to speak for all the members of its churches, but they express the considered judgment and position of the representatives of those churches sitting for that purpose on the Governing Board. The Communications Commission is the arm of the NCCC officially charged with responsibility to speak out on matters relating to communications.

FRIENDS OF WONO is a citizens group in the Syracuse, New York market which has in the past pursued the interests of the listeners to classical music station WONO-FM in Syracuse.

GRAY PANTHER MEDIA WATCH is an arm of the GRAY PANTHERS organized six years ago for the purpose of monitoring the media to detect and eliminate patterns of discrimination against the elderly. THE GRAY PANTHERS is a national organization composed of Americans of all ages who are committed to raising our national consciousness about the way in which older persons are being treated in America today.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS is a trade union representing, for collective bargaining, men and women in the United States and Canada who are employed in the aerospace, aircraft, automotive, railroad, shipbuilding, machinery manufacturing and other industries. It is affiliated with the AFL-CIO and the Canadian Labour Congress.

KMPX LISTENERS GUILD is a citizens group in the San Francisco Bay Area which appeared before the FCC in a successful effort to retain a big band sound in the Bay Area. It continues to support a big band sound for the Bay Area.

LOUISIANA CENTER FOR THE PUBLIC INTEREST, located in New Orleans, Louisiana, is a public interest law firm engaged in the delivery of legal and social services to an elderly clientele in metropolitan New Orleans. It has engaged in systems advocacy on behalf of the aged, including advancement of the First Amendment rights of the elderly.

NATIONAL ASSOCIATION FOR BETTER BROADCASTING, founded in 1949, is the oldest national consumer organization in the United States with activities exclusively concerned with broadcast program service. Headquartered in Los Angeles, NABB is a nonprofit organization whose directors include active national leaders in law, education, business, religion, mental and physical health, journalism and social welfare.

NATIONAL COUNCIL OF SENIOR CITIZENS is an organization of more than 3.5 million senior citizens in 4,000 older people's clubs around the country. Its interests range from Federal and State legislation to community action, including support for an adequate income for the elderly, health care, housing, employment, social security, crime prevention and consumer affairs.

NATIONAL CITIZENS COMMITTEE FOR BROADCASTING is a broad-based national membership organization which has taken leadership roles on behalf of the public before the FCC over the past decade, seeking vindication of the public's rights in all forms of broadcasting and telecommunications media.

NATIONAL EDUCATION ASSOCIATION is the nation's oldest and largest organization of professional educators, with a membership of over 1.7 million. Its purposes as set forth in its charter, are "to elevate the character and advance the interests of the profession of teaching and to promote the cause of education in the United States."

NATIONAL TASK FORCE ON PUBLIC BROADCASTING is a coalition of organizations and individuals throughout the country who combine a broad range of citizen concerns in telecommunications. The Task Force, headquartered in Oakland, California, is the only broadly based national organization dedicated to the establishment and protection of public rights in public telecommunications.

ORGANIZATIONS FOR UNIQUE RADIO is a national ad hoc coalition of organizations and individuals who seek the preservation of the public's rights in broadcasting with respect to the maintenance of unique, financially viable radio formats when strong public support exists for retention of a format.

PTA TELEVISION COMMISSION is a group of volunteers who operate the National Congress of Parents and Teachers' (PTA's) TV Action Center. The Center was established as a result of nationwide public hearings held by the PTA in 1977 which explored the influence of media on children and youth. It helps parents and teachers to

evaluate broadcasts, to use their influence to improve the quality of network and local broadcasts, and to design curricula aimed at improving students' viewing skills.

ARGUMENT

I. Introduction and Summary

This case presents troublesome issues of agency abuse and disavowal of discretion, industry favoritism, and violation of basic tenets of administrative law. The procedural posture is complicated by an agency's attempt to overrule the courts on its own, rather than to seek earlier review of unfavorable appellate decisions. It concerns an issue which arises in less than .01 of 1% of all FCC renewal and transfer cases, yet it could affect the most basic rights and interests of the public vis-a-vis their local broadcast stations.

The amici urge affirmance in all respects of the thoughtful en banc opinion below, which addresses the substantive legal merits of the Commission's policy, and which addresses the errant procedures contributing to the Commission's abuse of discretion committed in its determination of the policy. We seek here to highlight the most significant aspects of this case from the perspective of the listening audience.

In summary, we argue that the FCC misconstrues the relative First Amendment rights of broadcasters and the public. It fails to recognize the mismatch between a theoretically free market, on the one hand, and the governmentally limited radio market, with severely restricted entry, on the other. Furthermore, as the Court of Appeals below explained, advertising makes the audience the product being sold to advertisers, who are the "consumers". This skews the workings of the market as the sole determinant of viewer satisfaction.

The most egregious Commission mistake, legally, is its violation of the administrative law tenet that any rule must have escape valves, waivers and the like. The Commission's policy is never to look at market failures in the entertainment format question. Its absolute refusal to review particularized factual showings of market failure, such as the sale of the last viable Spanish language formatted station in a city 65% Hispanic, is simply illegal.

II. Procedural Posture

Amici attach significance to the fact that the Commission's orders below are an attempt by an administrative agency to circumvent or overrule a series of appellate court decisions without having sought review by this Court of any of those earlier decisions. Specifically, the FCC instituted its Inquiry (as opposed to a Rule Making proceeding) over one year after the Court of Appeals' en banc decision in *Citizens Committee to Save WEFM v. FCC*, 506 F.2d 246 (D.C.Cir. 1974) (en banc). The Commission was very apparent in its determination to avoid implementation of the court's statutory interpretation.[*] (*See* A.22a.)

This case is not and should not become a review of the *WEFM* decision ab initio. Once it became final, the *WEFM* holding became the proper and accepted statutory interpretation. The Commission's later attempt to change that interpretation must then be viewed in the same manner that any other change in agency interpretation of its statute is — with reasoned decision making and analysis, consistent with the statute and the Constitution.

[*] There are many instances when the courts are called upon to determine the correct statutory interpretation. Recently this Court reversed a series of FCC rules and policies as beyond the Commission's statutory authority. *FCC v. Midwest Video Corp.*, 440 U.S. 689 (1979). The Court's interpretation of the statute is ultimately that which the Commission must apply regardless of the agency's disagreement with the policy implications.

Thus, rather than to accept the Commission's characterization of appellate usurpation of an agency's policy-making function, we urge the Court to take cognizance of the FCC's posture of steadfast refusal to accept the judicial process or decisions. The Court would not condone such behavior of ordinary citizens, cf. *Walker v. Birmingham*, 388 U.S. 307, 318-19 (1967), and should view a government agency by an even stricter standard.

Nevertheless, the Commission does have the authority to change its policies and determinations of the public interest, if it rationally finds that the facts and circumstances so warrant. As we argue below, the Commission irrationally assumes a marketplace that never fails to achieve the public interest and refuses to look at specific facts and circumstances of particularized market failures in the future. Most egregiously, the Commission has again lost sight of its duty to balance conflicting First Amendment rights of the audience with those of the trustee licensed to serve that audience in radio, the broadcaster.

III. The Commission Erroneously Failed to Balance First Amendment Interests of the Public and of Broadcasters

A. *The Broadcaster's Speech Rights Must Be Balanced Against The Public's Right To Receive Speech.*

The Constitution protects the right to receive information and ideas in addition to and separate from the traditional right to speak. *Kleindienst v. Mandel*, 408 U.S. 753 (1972). "This freedom of speech and press . . . necessarily protects the right to receive . . . ." *Martin v. City of Struthers*, 319 U.S. 131, 143 (1943). See also, *Stanley v. Georgia*, 394 U.S. 557, 564 (1969).

In the context of the broadcast media, the public's right to receive is equally well-established. Justice White, writing for a unanimous Supreme Court in upholding the fairness doctrine in *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969), stated:

> "It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail . . . It is the right of the public to receive suitable access to social, political, aesthetic, moral and other ideas and experiences which is crucial here. That right may not constitutionally be abridged either by Congress or by the FCC." (*Id.* at 390.)

Furthermore, in balancing this right against the competing rights of the licensee, the *Red Lion* Court held in oft quoted language, that "It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount." *Id.*

Inherent and integral to this right to receive speech is the public's interest in diversity of programming. See, *e.g.*, *Red Lion, supra; Associated Press v. United States*, 326 U.S. 1, 20 (1945); *WEFM, supra*. In accord with this important First Amendment right, the Court of Appeals in *Citizens Committee to Preserve the Voice of the Arts in Atlanta v. FCC*, 436 F.2d 263, 269 (D.C.Cir. 1970), found that the public's right to a diversity of programming formats is intrinsic to the "public interest" standard under which the FCC operates:

> the 'public interest, convenience and necessity' can be served in the one case in a way that it cannot be in the other, since it is surely in the public interest, as that was conceived of by a Congress representative of all the people, for all major aspects of contemporary culture to be accommodated by the commonly-owned public resources, whenever that is technically and economically feasible.

The First Amendment rights of the public derive from the basic action of the government, preventing distribution of an individual's ideas and thoughts over radio without either a government license or permission from a licensee who already has one and who exercises almost unfettered editorial discretion over what is aired. See *Red Lion, supra; CBS v. Democratic*

Nat'l Committee, 412 U.S. 94 (1973). The individual's right to speak over a broadcast frequency, then, yields to the general right of the public to receive information and entertainment from diverse sources.

In a continuum of First Amendment interests, it is possible to posit situations where the broadcaster's particular interest in free speech might prevail over the public's interest in a given regulation. Thus, while an unlimited right of access by individuals might enhance the public's interest in diversity and for individual self-expression, the Supreme Court in *CBS v. Democratic National Committee*, *supra*, held that no such First Amendment right existed over and above the broadcasters' journalistic interests, broadly accountable to the public.

Here, in contradistinction, however, the First Amendment interests of the public to receive diverse information and cultural sources is very strong in limited entertainment format situations, while broadcasters remain free to speak as they will on political, electorate-informing matters where their First Amendment interests in unfettered speech is greatest.[2] Yet the FCC has chosen to regulate in the political or controversial speech areas (*e.g.*, Fairness Doctrine, ascertainment), while backing off from any consideration whatsoever of entertainment formats on First Amendment grounds.

Amici submit that the Commission's regulatory reluctance is misplaced, and that the public's First Amendment interest in cultural diversity must prevail over the broadcasters' interest in profit maximization.

[2] The Commission demonstrated no instances of a chilling effect on format changes or experimentation from the *WEFM* line of cases. To the contrary, over the past ten years since this doctrine has been in existence, the Commission's studies show a wide variety of diverse formats having developed.

B. *The Free Market System Does Not Adequately Balance First Amendment Rights In Radio.*

In its *Order* below (A.128a, para. 16) the Commission concludes that to promote the greatest diversity of listening choices for the public, "the marketplace is the best way to allocate entertainment formats in radio . . . ."

At the outset, the amici wish to emphasize their agreement, and the Court of Appeals' agreement, with this general proposition. ("We fully recognized [in *WEFM*] that market forces do generally provide diversification of formats." (A.24a.)) The point of difference is that the Commission is unwilling to look at the occasional particular situations where market forces break down. Yet it is predictable from the distinctions between the radio market and a theoretically perfect market that such market failures will occur.

In commercial radio the audience is the product, sold by the thousands to advertisers, who are the consumers. The economic incentives behind the free market system of broadcasting, then, are often inconsistent with both the principles of speech rights and the reality of diversity. The Court of Appeals recognized the import of these economic incentives to programming in *WEFM*, *supra*, 506 F.2d at 268:

> There is, in the familiar sense, no free market in radio entertainment because over-the-air broadcasters do not deal directly with their listeners. They derive their revenue from the sale of advertising time. More time may be sold, and at higher rates, by a station that has a larger or a demographically more desirable audience for advertisers. Broadcasters therefore find it to their interest to appeal, through their entertainment format, to the particular audience that will enable them to maximize advertising revenues. If advertisers on the whole prefer to reach an audience of a certain type, e.g., young adults with their

larger discretionary incomes, then broadcasters, left entirely to themselves by the FCC, would shape their programming to the tastes of that segment of the public.

(See also the Court of Appeals decision at A.24.a)

The court thus concluded that, in view of these antidiversity incentives, a "policy of mechanistic deference to 'competition' in entertainment program format" by the FCC would not be in the public interest. ***WEFM***, *supra*, 506 F.2d at 268.

If the FCC's role in maintaining a balance between competing interests is abdicated to the commercial marketplace, broadcasters will act in their own economic self-interest and will move to program formats which will enable them to maximize their advertising revenues. Concurrent with this drive to maximize profits will be an abandonment by broadcasters of those program formats which may appeal to those categories of listeners whom advertisers do not care to reach, such as the elderly or the economically disadvantaged. As a consequence, certain listeners who do not belong to a "demographically" desirable category will be deprived of their listening choice at the first preference level.

Compounding the profit maximization syndrome is the potential for abuse of the market allocation system in the transfer of licenses. For example, as noted in ***WEFM***, *supra*, 506 F.2d at 260, Commissioner Cox "characterized the proposed sale and format change of WGKA in Atlanta as an effort not to cut losses, which he disputed, but to maximize profits and 'did not see how the requisite public interest finding could be made short of the illumination afforded by a hearing.'"

The *Citizens Committee (Atlanta)* case demonstrates a phenomenon analogous to "reverse-trafficking" of licenses which would result from the Commission's policy of deference. Since a station catering to a minority-taste is less profitable than a majority-taste station, a new broadcaster could enter a "popular" market more cheaply by purchasing a minority-taste

station and changing the format than by purchasing outright a popular-taste station. Furthermore, the original owner of the minority-taste station could sell its license at a higher price to a buyer intending to change the format, than to a buyer intending to continue the minority-taste format. Clearly, the incentives for both the purchaser and seller of a minority-taste station could well militate toward the conversion of the minority-format into a more profitable majority-format, all to the detriment of the former listeners.

This negative incentive is particularly ironic in that a major element of the sales price is the value of the government license, secured by monopoly rents and *free* to the "trustee" who is selected by the government to be able to use the frequency.[3] Even the Commission itself regards licensing as a "subsidy for entertainment programming." *Deregulation of Radio*, (Notice) 44 Fed.Reg. 57636, 57655, n. 165 (1979).

Another problem with mechanistic reliance on the marketplace is that the government limits entry into a given market. This limitation is necessary to prevent interference, but the consequences are crucial here in distinguishing fact from the Commission's hypothetical pure market theory.

Under pure market theory, a free market would fairly allocate formats in large part because unmet demand for a format abandoned by a licensee could be satisfied by a new entrant. In radio markets new entry is often forbidden by the government's necessary limitations on licensing.

Thus in saturated markets, ones where all available frequencies are being used, the limits on entry could alter expectations that a "free market" will serve the public interest in each and every instance.

[3] See H. Levin, Fact and Fancy in Television Regulation (1980) at pp. 102-10.

IV. The Commission Has Failed to Provide Safety Valve Procedures for Situations Where the Facts of a Particular Case Do Not Comport with the Underlying Purposes of a General Rule or Policy.

The greatest division between the Commission and the court is not with the 99% of all broadcasters who can select or alter their formats at will. Rather the question is whether the Commission can ignore specific instances of market failure, where theory succumbs to reality, and the basis for the rule does not hold. Judge Leventhal observed in *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C.Cir. 1969):

> The agency's discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure. . . . That an agency may discharge its responsibilities by promulgating rules of general application . . . does not relieve it of its obligation to seek out the "public interest" in particular individualized cases.

Similarly in *United States v. Storer Broadcasting Corp.*, 351 U.S. 192, 205 (1953), this Court held that the Commission was required to consider waivers of a rule on multiple ownership where it could be shown that nonapplicability would serve the underlying purposes of the general rule or policy. See also *NBC v. United States*, 319 U.S. 190, 207, 225 (1943).

Certainly the Commission could have come to grips with the problem and designed criteria by which licensees and the public would be able to measure market failure. But the Commission's further effrontery to the above principles in its *Order* below (A.134a, n.8)[4] requires judicial reversal.

[4] "The Commission has indicated that it would take an extra hard look at the reasonableness of any proposal that would deprive a community of its only source of a particular type of programming. *Zenith Radio Corporation*, 40 FCC 2d at 231. Having given the entire matter further study, however, we have concluded that such a position is neither administratively tenable nor necessary in the public interest.

(Footnote continued on next page)

V. Format Change Cases are Rare and Manageable.

Protests of format changes are necessarily rare. It is very costly and unwieldy to mount a campaign to gain thousands of petition signatures of protest, establish uniqueness of format and show viability of the format. In the ten year history of the format change doctrine we have been able to identify fewer than 20 reported cases of challenges to format changes before the FCC.[5] See list of cases in the Addendum to this brief. In all but a handful the Commission has disposed of the issue without a hearing. Two cases were affirmed by the Court of Appeals, *Hartford Communications Committee v. FCC*, 467 F.2d 408 (D.C.Cir. 1972) and *Lakewood Broadcasting Service v. FCC*, 478 F.2d 919 (D.C.Cir. 1973). Two were remanded to the Commission but settled prior to hearing. *Citizens Committee (Atlanta) v. FCC*, 436 F.2d 263 (D.C. Cir. 1970), and *Citizens Committee to Keep Progressive Rock v. FCC*, 478 F.2d 926 (D.C.Cir 1973). Only *WEFM, supra*, resulted in a hearing, and as the Court of Appeals observed, that was settled prior to administrative review. While a few other protests have occurred, they have been so minor that the FCC has disposed of them in the form of unreported opinions. The extent of the administrative problem, then, is minimal, and likely to remain so.

Recently, the Commission dismissed a challenge to transfer of Georgetown University's WGTB-FM to the University of the District of Columbia. While it conceded uniqueness of the format and a significant public outcry, the Commission found

(Footnote continued from previous page)

Rather, as discussed herein, we believe that the market is the allocation mechanism of preference for entertainment formats, and that Commission supervision in this area will not be conducive either to producing program diversity nor satisfied radio listeners." (A.134a.)

[5] We estimate that during that period the Commission considered at least 26,000 renewals and 5,000 transfers. Thus, format change issues arose in less than half of 1% of all transfers taken alone and less than .01 of 1% of all Commission renewal and transfer cases.

without a hearing that other public interest factors warranted approval of the transfer. The Commission concluded that the transfer would result in an increase in educational/instructional programming, and that at the most it was "a tradeoff of one mix of arguably unique musical programming for another mix of arguably unique musical programming." *Georgetown University*, 77 F.C.C.2d 7, 17 (1980).

This case demonstrates the Commission's ability to face the issue when required to do so under *WEFM*, and to resolve the questions in a reasonably clear and efficient manner.

VI. A Resolution of this Case Should Remain as Narrow as the Court of Appeals'.

While the issue in the instant case is not a particularly common one, its resolution by this Court could have a significant bearing on the public's future rights in broadcasting. If the Court paints with a broad brush, for example, we could see the heretofore delicate balance of First Amendment rights seriously upset.

Most of the amici have been actively trying to participate in the Commission's ongoing proceeding designed to eliminate some other substantive rules and policies for radio. *Deregulation of Radio*, *supra*. We urge the Court not to write an opinion in this proceeding which would adversely affect the rights of the public with respect to non-entertainment programming. With the limitations on an individual's right to speak over radio, and the public subsidies provided to broadcast licensees, we as citizens pay a heavy price for the public trusteeship trade-off. Occasionally the FCC must step in to assure that the trade-off is working according to congressionally delegated standards. The Court of Appeals did no more than necessary to prod the Commission into acting as Congress had provided. We urge this Court to act in a similarly restrained way.

CONCLUSION

For the foregoing reasons, Amici Consumer Federation of America et al. respectfully urge this Court to affirm in full the court's decision below.*

Respectfully submitted,

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August 29, 1980

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* The authors wish to gratefully acknowledge research assistance for this brief from Ms. Jeeni Wong, UCLA Law student, and Andrew Feshbach, undergraduate, UC Berkeley, and administrative support from Doris W. Davis. This brief does not necessarily reflect the views or position of the University of California, or any other state agency.

ADDENDUM

Reported Cases Involving Significant Protests To Changes In Entertainment Formats, 1970-1980

1. Citizens Committee to Preserve the Voice of the Arts in Atlanta (WFKA-FM) v. FCC, 436 F.2d (D.C.Cir. 1970) (court reversal of FCC summary approval of sale of classical station to transferee proposing a middle of the road (MOR) station. Settled on remand. No hearing.)

2. WCAB, Inc., 27 F.C.C.2d 743 (1971) (approval of sale of market's second progressive rock station, which was losing money, over objections of 34 listeners. No hearing.)

3. Keyes Corp., 31 F.C.C.2d 32 (1971). (No hearing required on protest from competing station.)

4. Leflore Broadcasting Co., 36 F.C.C.2d 101 (1972) (change of format occasioned look at licensee's other activities; hearing held on issues apart from format change question and license ultimately denied. 65 F.C.C.2d 556 (1977), *aff'd*, 47 P&F Radio Reg.2d 901 (D.C.Cir. 1980)).

5. Rebel Broadcasting Co., 40 F.C.C.2d 619 (1973) (change from MOR to rhythm and blues; approved without a hearing over protest from competing station with Black format; area 40% Black population.)

6. Hartford Communications Comm. v. FCC, 467 F.2d 408 (D.C.Cir. 1972) (sale of UHF pay channel to religious broadcaster did not warrant a hearing.)

7. Citizens Committee to Keep Progressive Rock v. FCC, 478 F.2d 926 (D.C.Cir. 1973) (remanded for a hearing on the issues of financial viability of the existing "progressive rock" format and alternative sources of the format; the parties settled the dispute and no hearing was held.)

8. Lakewood Broadcasting Service, Inc. v. FCC, 478 F.2d 919 (D.C.Cir. 1973) (affirmed the Commission's approval of switch from "all news" to "country and western," without a hearing.)

9. Station WWQS-FM, 27 P&F Radio Reg.2d 667 (1974), (format change from religious music to "standard popular" music, where the licensee owned an AM station with a religious format, approved without hearing.)

10. Kaiser Broadcasting Corp., 45 F.C.C.2d 601 (1974)(assignment from "mixture of rock, rock/folk, folk and popular vocal" to religious talk and music approved without a hearing where substantial financial loss shown on the present format, and the format was available on other stations in the service area.)

11. Starr WNCN, Inc., 48 F.C.C.2d 1221 (1974)(petition to stay the mid-term format change from classical to quadraphonic rock was denied over 100,000 concerned listeners' objections to the proposed change. Ultimately settled without a hearing.)

12. Citizens Committee to Save WEFM v. F.C.C., 506 F.2d 246 (D.C.Cir. 1974) (en banc) (court remanded switch from classical to rock music for a hearing on the questions of financial viability, accuracy of community leader surveys, and availability of alternative sources.) Subsequently, the parties agreed to a settlement during the administrative process and the Commission approved. Zenith Radio Corp., 42 P&F Radio Reg.2d 472 (1978).

13. Leonard J. Patricelli, 40 P&F Radio Reg.2d 924 (1977)(change from classical to popular music, approved without a hearing over a petition to stay.)

14. Stockholders of Rust Communications Group, Inc., 64 F.C.C.2d 883 (1977)(format change from "all news" to "country & western" approved without a hearing over a petition to deny filed by a competitive station with "country & western" format.)

15. McCormick Communications, Inc., 42 P&F Radio Reg.2d 989 (1978)(proposed format change from contemporary to "mixture of religious, instructional, talk, and inspirational" approved without a hearing over petition to deny submitted by one individual.)

16. WEZE, INC., 44 P&F Radio Reg.2d 966 (1978)(second petition to deny was filed against transfer in McCormick Communications, Inc., *supra;* disposed of without a hearing.)

17. Plough Broadcasting Co., Inc., 44 P&F Radio Reg.2d 1465 (1978), (assignment approved without a hearing over objections raised in 13 letters and a petition signed by 97 individuals from a "country & western" format to a "beautiful music" format. The Commission noted that the letters and the petition did not meet the requisite showing of significant public protest, and emphasized that the loss in diversity potentially occasioned by format changes that deprive an area of its only stations employing a particular format does not override the public interest in having decisions affecting program content made by private rather than government interests.)

18. Georgetown University, 77 F.C.C.2d 7 (1980)(transfer approved without hearing where new format was unique.)